

## § 16.7

letter to the requester which shall confirm the requester's agreement to pay fees under §16.3(c) and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under §16.11 and shall disclose records to the requester promptly on payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated

## 28 CFR Ch. I (7–1–14 Edition)

through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under §16.9(a) and a description of the requirements of §16.9(a).

### § 16.7 Classified information.

In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

### § 16.8 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt

written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.*

A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's ob-

jections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the

## § 16.9

component shall notify the requester(s).

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### § 16.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal letter and the envelope "Freedom of Information Act Appeal." Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

## 28 CFR Ch. I (7-1-14 Edition)

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

### § 16.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### § 16.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. A component ordinarily shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for